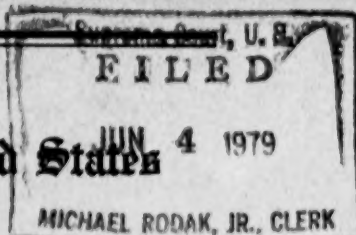


IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1978

No. 78-910



OCCIDENTAL OF UMM AL QAYWAYN, INC.,

*Petitioner,*

—v.—

CITIES SERVICE OIL Co., et al.,

*Respondents.*

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**PETITIONER'S SUPPLEMENTAL BRIEF  
IN RESPONSE TO BRIEF OF THE  
UNITED STATES AS AMICUS CURIAE**

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The Government concedes that it erred when it advised the Court of Appeals below that claims involving territorial waters disputes were nonjusticiable. (Amicus Brief pp. 6, 7, and footnote 2) This mistaken advice permeated the Court of Appeals' rejection of jurisdiction. Another error below is conceded. The Court of Appeals held in effect that the District Court erred when it ruled that the Act of State doctrine barred relief.

So there is a chain of conceded errors and yet the Amicus Brief squeezes out of these cumulative errors a recommendation that this court should refuse even to consider the matter. This conclusion is made even more inconsistent by other admissions in the Amicus Brief:

1. The Government concedes that the question presented by this case "with respect to the scope of the judicial func-

tion" is "both important and sensitive." (Amicus Brief, p. 4.)

2. The Government concedes that the "monetary stakes in this case are substantial" (Amicus Brief, p. 4) and that the case is one of first impression as to whether a political question is presented.<sup>1</sup>

3. The Government concedes that the respondents' claims based on the assertion by Iran and Sharjah of 12-mile territorial waters are *justiciable* (Amicus Brief pp. 6-7); that the courts may "reject" these claims "*on the merits*" (Amicus Brief p. 7, emphasis supplied); and that the contrary position taken by the Government in its brief filed in the Court of Appeals below "*was incorrect*" (Amicus Brief, p. 6, footnote 2, emphasis supplied).

4. The Government concedes, *arguendo*, that a claim (like Occidental's) based upon an agreement between sovereigns (like the 1964 seabed border agreement between Umm and Sharjah) can be determined in a United States court (Amicus Brief, p. 5).

5. The Government concedes that the United States is bound by the 1958 Convention on the Continental Shelf, which provides that, in absence of agreement between countries with opposing coastlines, the continental shelf between them is divided by the median line between their two coasts. (Amicus Brief, p. 8).

<sup>1</sup> The Government cites mere dicta in support of its "political question" argument, Amicus Brief p. 8, but omits any reference to the only dictum that specifically addresses the issue and holds to the contrary. See, *Williams v. Suffolk Insurance Co.*, 38 U.S. (13 Pet.) 414 (1839) and discussion at pp. 22-23 of Occidental's Petition for Certiorari. Furthermore, the question as to whether the Hickenlooper Amendment makes the question clearly justiciable is, to say the least, a matter of first impression.

6. The Government concedes that Occidental's oil find is on Umm's side of the median line between the coasts of Umm and Iran. (Amicus Brief, p. 10). This is consistent with Occidental's claim of title.

In view of these admissions, what possible fact or issue can obstruct consideration by our courts of this controversy?

1. The Government theorizes that Iran could have a latent continental shelf claim that could include the area of Occidental's oil find. This claim, the Government conjectures, could involve the continental shelf "either of mainland Iran or of Abu Musa", and could present a "political question". (Amicus Brief, p. 12). This argument is a baseless diversion.

A. A claim that Occidental's oil find is on the continental shelf of mainland Iran would violate the 1958 Convention on the Continental Shelf, of which the United States is a signatory. The Convention is the supreme law of the land, and cases arising under it are the subject of mandatory Federal jurisdiction. (U.S. Const. Art. III, Sec. 2) The Convention establishes the median-line principle of delimitation, in absence of agreement, and the Government has conceded that the oil find is on Umm's side of the median line. (Amicus Brief, p. 10) The oil find is therefore beyond the continental shelf of mainland Iran. This issue is justiciable under the Convention.

B. It is inconceivable, in light of the geography of the Persian Gulf and the consistent practice of the Gulf states, that independent continental shelf rights should be attributed to the island of Abu Musa, which is about the size of Central Park in New York City. (See dis-



cussion at pages 7-10 of the Petitioner's Reply Memorandum). The Government concedes that the Iranian claims are "*predominantly*" premised on the 12-mile territorial sea, "rather than the continental shelf". (Amicus Brief, p. 12) This admission does not go far enough. The fact is that the Iranian claims were based *exclusively* on an extended territorial sea of 12 miles and never on any other ground. (Petitioner's Reply Memorandum, pp. 2-6) Iran did not conceive of a continental shelf argument even after the United States rejected its claim of 12-mile territorial sea.<sup>2</sup> An otherwise justiciable claim cannot be put beyond the reach of courts by the interjection of a fictitious issue which is then relied upon to conjure up a political question.

2. The Government fails to address the problem of the "judicial vacuum" that would result if the Court distorts the political question doctrine into a rule of non-decision that bars adjudication of private property claims of American citizens under the Hickenlooper Amendment or otherwise. (See discussion of pages 22-30 of Petition for Certiorari).

3. This is concededly a case of first impression, or rather impressions. May citizens of the United States have their rights with respect to property shipped into the United States determined in an American Court even though two foreign governments touch on the controversy? Or does such contest automatically present a political question? If so, we would disenfranchise Americans' rights to their courts in numerous situations which traditionally come before them, i.e. situations where the applicable law depends on controverted sovereignty over a geographic location:

<sup>2</sup> Amicus Brief, Appendix A. We note the failure of the Government to submit two of the enclosures of this unpublished document which are not available to us.

inheritance rights, citizenship status, conflicts of laws among nations, capacity to make contracts, currency disputes, real estate titles, questions of foreign taxation, matrimonial status, legitimacy contests, and a host of others. Even boundary line disputes are justiciable where the Executive has not taken a position (*Williams v. Suffolk Insurance Company, supra*). The Government conceded in its *Amicus Brief* in the Court of Appeals below (at p. 7), "we have uncovered no case in which the Supreme Court has specifically held that cases involving boundary disputes raise nonjusticiable political questions".

The burden of delimiting a citizen's rights to his courts is heavy on the proponent, and certainly cannot be met here, where the validity of Occidental's concession had been approved and confirmed by the Protecting Country, Great Britain, which had also rejected this very Respondent's claim, and where bad faith abounds in the form of a back-dated decree, the rejection by Respondent's grantor of a mediator's decision against it, and its persistent claim that the 12-mile territorial sea contention is the basis of its defense.

The judicial temple may not be invaded by an executive department of the Government which urges it to close its doors so that the political exigencies of the State Department may prevail.

4. American citizens are not to be deprived of a judicial decision even if their controversy encompassed continental shelf claims. There is no precedent for such a rule. There should be none. The words "political question" are not magical incantations to be applied by whim so as to permit executive departments to instruct the judiciary when to abdicate its constitutional duties.

The assertion that such a confiscation of property as has occurred here is "not likely to occur again, if at all," is incredible. The world is teeming with lawlessness and the rights of property as well as life are being confiscated daily. To refuse jurisdiction, even when the stolen property is brought within our borders, is to establish a thieves' market that would be flooded by adherence to such an amoral approach. At most the Government brief presents contentions that should be made at a trial. They are insufficient to bar jurisdiction.

The Amicus Brief seeks to distinguish the "Act of State" from the "Political Question" doctrine. (pp. 12-13 note 10) This technical distinction cannot survive the philosophical and constitutional tests. Both doctrines involve political questions in the generic sense. Both prevent a decision on the merits and therefore create nonjusticiability. But this principle expressed in the Act of State Doctrine so offended Congress and the President that the Hickenlooper Amendment directed that all courts must decide confiscation contests on the merits, "notwithstanding any other provision of law." The fact that the Court of Appeals characterized the "Political Question" as a "slightly different ground" from the "Act of State" Doctrine (577 Fed. 2d at p. 1198), demonstrates how thin the distinction is. The court below further sought to escape the impact of the Hickenlooper Amendment by suggesting for the first time that perhaps the Hickenlooper Amendment is not constitutional (Petitioner Appendix A-7-8), another reason why certiorari should be granted so that the murky constitutional questions in this case may be clarified.

### Possible Alternative to Writ of Certiorari

In view of the errors now admitted to have occurred in the lower courts, we request that certiorari be granted or, at the very least, that the case be remanded to the lower court for a full evidentiary hearing, including expert and other fact testimony, to determine whether the Island of Abu Musa has an independent continental shelf within the meaning of the Convention on the Continental Shelf, adopted by treaty in 1958. If not, then the only argument remaining for the existence of a "Political Question" would disappear, and this case could then be decided on the merits without reaching any of the constitutional questions presented to this Court. Had there been such a fact determination, instead of the premature ruling presently under review, the proceedings before this Court might well have been rendered academic and unnecessary.

Respectfully submitted,

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